

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 - 1468

MINUTES from January 16, 2008 FULL COMMITTEE MEETING State Capitol, Room 211, Beltz HOUSE SUBCOMMITTEE MEETING TO FOLLOW SENATE SUBCOMMITTEE MEETING TO FOLLOW

1. Call the Meeting to Order: The meeting was called to order at 1:08 p.m. by Chair Herman G. Walker, Jr. Members present: Senator Con Bunde, Senator Gary Stevens, Representative Bob Roses, Representative Berta Gardner, H. Conner Thomas, Dennis (Skip) Cook, Gary J. Turner and Ann Rabinowitz (attending by teleconference at the Anchorage LIO). Staff present: Joyce Anderson and Dan Wayne, LAA legal.

2. Approval of Agenda: Member Turner made a motion to approve the agenda as presented. Hearing no objection, agenda approved.

3. Approval of Minutes: Member Cook made a motion to approve the House Subcommittee minutes from December 12, 2007. Hearing no objection, minutes approved. Member Cook made a motion to approve the Senate Subcommittee minutes from December 12, 2007. Hearing no objection, minutes approved.

4. Public Comment: None.

5. CHAIR/STAFF REPORT:

a. Public Member Terms: No public member terms will expire in 2008. Two public member terms will expire in 2009; Dennis (Skip) Cook and Herman G. Walker, Jr.

b. Publication of 2007 Advisory Opinions and Public Decisions: The 2007 advisory opinion booklet was distributed to all legislative offices this week. Public decisions will be distributed next week. Advisory opinions issued increased in 2007. Two requests were from the Committee (prior to 07-10-07 the Ethics Committee could not request an advisory opinion) and several requests addressed campaign issues and technology issues.

c. State Benefit and Loan Review: Letters were sent to each of the fourteen state departments asking for an update on all benefit and loan programs in place. All departments responded and no changes to the current list of reportable programs were

reported and no new ones were added. No changes to the current list were needed.

d: 2008 Ethics Training: Training for support staff and new legislative staff was conducted last week and was well received. Legislator training was conducted in the last two days. Four legislators did not attend for various reasons. Ms. Anderson will have a special training session at a later date that will accommodate their schedules. The sessions were lively with lots of questions. Some of the questions focused on statutes that have been in place for many years.

Senator Stevens was concerned that at yesterday's training senators had to leave the training early to attend a floor session and he wanted to make sure they received credit for attending and that they received all the information that was applicable. Ms. Anderson reported a list was kept as a record of those who attended and the information presented up to that point was sufficient. Senator Bunde suggested at the next training class an announcement should be made to keep debate at a minimum. Chair Walker asked the committee for input on those who left early or were coming and going. Representative Roses stated we are not there to babysit those who were required to attend.

e: Disclosures through December 31, 2007: An updated list of disclosures was in the committee packet. There was one late disclosure from Senator Hollis French for his board membership on the Victims for Justice board. He had not filed this disclosure since 2005. The committee decided not to fine Senator French as he had filed the disclosure on his financial disclosure reports to APOC as required.

Ms. Anderson reported the Juneau Legislative Office has two support staff assigned to developing an electronic filing program for ethics disclosures. Ms. Anderson will work with the Senate Secretary and the House Clerk to coordinate the format of the forms and reports. The expected time frame for completion of this project is sometime during the interim. Both the Senate Secretary and House Clerk staff are excited that this project is finally getting off the ground. They have had to dedicate one staff person to input data for ethics disclosures each session to comply with publishing disclosures in the Legislative Journal.

Senator Bunde suggested instead of providing a hard copy list of disclosures for committee meetings, the committee reference the ethics web site. Ms. Anderson stated there was no requirement to include a hard copy of this report in the committee packet. Chair Walker agreed with the suggestion and there was no opposition.

6. BUDGET ISSUES

a. FY08 Budget Update: As of January 3, 2008, the balance in the Ethics budget is \$93,893 out of a total appropriation of \$174,400. It is anticipated there will be sufficient funds to cover expenses through June 30, 2008. The committee had no questions.

b. FY09 Budget Request: The request for FY 09 was submitted with an additional change from what the committee voted on at the December 12, 2007 meeting. The permanent seasonal staff position was increased from 4.5 months to 6 months. The change

was the result of a discussion between Ms. Anderson and Ms. Varni, Executive Director LAA.

Motion made by Representative Roses to increase the permanent seasonal staff position from 4.5 months to 6 months. Member Turner asked what was the rationale for the increase in this position. Ms. Varni reported she looked at the actual time worked for Ms. Grenier and 6 months was more in line with the actual time worked to date and projected hours for the rest of FY 08. Senator Bunde pointed out the increase in the Ethics budget is 12.27% and suggested perhaps the department of administration be informed of the increase and the rationale. Ms. Anderson reported she has scheduled meetings with the chairs of both the Senate and House Finance committees in the next couple days to explain the increases in the Ethics budget.

Roll call vote taken: – Senator French, Senator Bunde, Representative Roses, Representative Gardner Members Thomas, Walker, Rabinowitz (by teleconference) and Turner and Chair Cook – YES. Motion carried.

Senator Bunde questioned whether a member of the committee was allowed to vote by teleconference. Chair Walker indicated the rules of procedure allow voting by teleconference in an open (not Executive Session) committee meeting.

7. ADVISORY OPINION 07-05 BLACKBERRY USE: The request was from Representative Reggie Joule. He requested clarification on the use of Blackberry's for personal use and campaign use. Some legislators own their Blackberry while some are using a state owned Blackberry. At the December 12, 2007 meeting a draft opinion was discussed and tabled. Before the committee is the second draft opinion dated January 10, 2008.

Mr. Wayne went over the draft. On page 2 a new sentence was added stating the Blackberry device is legislative property and is not available for sale to a member of the legislature and therefore it cannot be used for campaign or political party activity.

Senator Bunde moved the adoption of the advisory opinion. Member Turner asked if personal use should be addressed in this opinion. Ms. Karla Schofield, Deputy Director LAA, updated the committee on the tax issue briefly addressed at the last committee meeting. The IRS has determined individuals will be taxed for personal use of a state owned Blackberry even though there is no incremental cost to the state for the personal use. Senator Bunde asked what about the accounting cost to the state. Ms. Schofield reported the cost would be minimal. She reported the other option would be to give a legislator an allowance for this type of use on a percentage basis. The allowance would be taxable. There was a considerable amount of discussion on the subject of personal use and taxable consequences.

Chair Walker further asked about the de minimis use requirement for personal use. Mr. Wayne noted that page 3 of the draft opinion does quote the statutory site that mentions de minimis use for personal purposes and he suggested this reference was sufficient.

Member Thomas questioned the use of the term “partisan political activity” and indicated the wording should be consistent throughout the opinion. Representative Gardner indicated that all political activity is not always partisan and perhaps the word “partisan” should be removed from the draft. Senator Bunde agreed to amend his motion to delete the word “partisan” in the conclusion section of the draft and called for the question. Roll call vote taken: YES - Senator Stevens, Senator Bunde, Representative Roses, Representative Gardner, Members Thomas, Cook, Turner and Rabinowitz and Chair Cook. Clarification was made that the word “partisan” should be removed from the entire draft except for quoted statutory language.

8. ADVISORY OPINION 07-08: LEGISLATIVE TRAVEL AND CAMPAIGNING:

This item was on the December 12, 2007 agenda as a discussion item. The committee moved to request an advisory opinion on this subject. APOC issued an opinion on the use of the state jet for both government purposes and campaign purposes. APOC is considering regulations on this subject which would include legislators as well and would like comment from the Legislative Ethics Committee on this subject. Advisory opinion draft dated January 11, 2008 was presented by Mr. Wayne. The opinion is a general discussion since no specific factual situation was presented. A government asset or resource may not be used by a legislator or legislative employee for involvement in or support of or opposition to partisan political activity. Also, the use or authorization of the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning is prohibited. Past opinions were referenced in the draft. Mr. Wayne pointed out the draft contains language that implies if a bright line does not exist between the two activities and the public perceives the activity as improper, the committee would be reluctant to approve of it.

Chair Walker asked if the opinion prohibits the activity or only if it is frowned upon. Mr. Wayne stated the opinion would become fact specific for each individual situation. Senator Stevens commented the opinion appears to be written for urban Alaska and not rural Alaska. Member Cook stated the non-incumbent does not have the advantage of having state paid travel. Representative Roses agreed with Member Cook. He suggested proportional allocation of funds may be a solution. Representative Gardner agreed with Member Cook. Senator Bunde stated a legislator has the power of incumbency. Member Thomas agreed with Senator Stevens’ concerns.

Mr. Wayne talked about two types of per diem for legislators; short term per diem and long term per diem. Ms. Schofield clarified the difference.

Senator Stevens asked for clarification of the following scenario: What if a legislator flew to a city in his district for a legislative committee meeting, the legislator was a member of the committee and while there the Chamber of Commerce asked him to speak at their monthly meeting - keeping in mind the legislator is running for office. Member Cook stated it would depend on the content of the message. If the message was an update on legislative issues, the speaking engagement would be permitted. But if the legislator is standing up and saying he is running for office then the activity would be prohibited. The opinion does not address this type of situation. Senator Bunde suggested there should be a

differentiation between political fund raising and campaigning. He believes giving a talk about how his point of view is better than someone else's is campaigning. Senator Bunde also stated the press conferences at the Capitol could be considered campaigning.

Representative Gardner sees this issue similar to the Blackberry issue just discussed. She stated there should not be any overt campaign fundraising. Representative Gardner made a motion to approve the draft as presented.

Member Thomas agreed with Senator Stevens about the Chamber of Commerce. Chair Walker asked if the opinion states the legislator may reimburse the state for the collateral campaign activities on the state dollar. Mr. Wayne indicated no. He pointed out "partisan political activity" is not defined in statute. If a legislator is asked to talk to a group on an issue during a campaign period, the activity may be permitted depending on the subject matter. If a complaint is filed, the ethics committee would make the final determination if the activity was permitted or prohibited. The opinion provides guidance for these types of activities. Representative Roses gave another example: What if a legislator is asked to speak at a Rotary Club meeting and after the meeting either places his campaign literature or campaign fund raising envelopes on a table for participants to pick up or the legislator hands out the items as people are leaving. This activity would be a violation.

Senator Bunde questioned the conclusion in the APOC advisory opinion which allowed reimbursement. Staff pointed out the statutes reference Executive Branch ethics. He wondered if the APOC ruling could provide some guidance and consistency to the Ethics Committee. Mr. Wayne pointed APOC was interested in what the Legislative Ethics Act required.

Senator Stevens rephrased his earlier scenario: What if the Resource Committee went to a city of which one of the legislators represented and the City Council asked the legislator to speak about an issue. Representative Roses responded that would not be a problem. If the legislator set up 15 meetings, the committee would most likely find a violation.

Mr. Wayne suggested adding to the opinion that the committee specifically state government travel money is a government resource. Member Turner stated he is struggling with the definition of political campaigning. Chair Walker stated there is no definition. Senator Stevens agreed with Member Turner. Chair Walker informed committee members they may define the term if they so choose which would only be applicable for this opinion. Chair Walker asked if the committee wants to go down that road. Member Turner indicated either the committee or the legislature needs to define the term and the best route would be in statute. Member Thomas said the committee would eventually define the term if a complaint was filed and therefore it should be defined in this opinion.

Chair Walker suggested the item be tabled for further discussion to determine if the committee wishes to define political activity and campaigning in this opinion. Chair Walker suggested Ms. Anderson talk to the legislators on the committee to determine what they consider campaigning and political activity.

Member Turner suggested adding the word “Incidental” in footnote 2 at the beginning of the last sentence. Ms. Anderson suggested examples be included in the opinion for future reference. Many opinions include examples. Senator Bunde asked staff to notify APOC that perhaps their opinion is in conflict with legislative ethics. Ms. Anderson pointed out the APOC opinion rests on executive branch ethics statutes. Senator Bunde commented that apparently there is no consistency.

9. LEGISLATIVE INTERNSHIP PROGRAM: At the September 28, 2007, meeting, staff was asked to determine what internship programs were in place. An email was sent to all legislators asking what intern programs were in place in their office. No new programs were in place. Ms. Anderson recommended a notice be sent at the end of each year asking what internship programs are being accessed by legislators and report back to the committee. Chair Walker agreed and the procedure will be added to the end of the year activities.

10. COMMITTEE RULES OF PROCEDURE: Chair Walker indicated the Rules of Procedure need to be updated based on changes to the Legislative Ethics Act from the passage of HB 109. Ms. Anderson explained the changes.

Section 2, pages 1-3, Delegation of Authorities. Added section (e) to reflect the addition of compassionate gifts, AS 24.60.075; and changed the title of the section from Delegation of Authority to Administrative Policies. Senator Bunde made a motion to approve the changes. Hearing no objection, motion carried.

Section 10, pages 7-8, Advisory Opinions. Added to section (a) that the Ethics Committee and the Alaska Public Offices Commission may request an advisory opinion. Added section (f) explaining how advisory opinions are issued. Senator Bunde made a motion to approve the changes. Hearing no objection, motion carried.

Section 11, pages 9-10, Disclosures. Changed the committee procedure for notifying individuals covered by the Legislative Ethics Act for late disclosures. Added a section on the new requirements for disclosures after leaving office or employ with the legislature. Representative Roses made a motion to approve the changes. Member Thomas questioned why two certified letters were sent instead of one when fines were not paid. Discussion held. Section (f)(4) will read as follows: “Committee staff will mail a certified letter to individuals with unpaid fines. If the fine is not paid within 30 days from the date the certified letter is received, committee staff will automatically refer the matter to the Attorney General’s office for collection.” Representative Roses accepted the friendly amendment made by Member Turner and moved the changes. Hearing no objection, motion carried.

Section 12, pages 10-11, Education. The entire section was updated based on new requirements for training. Ms. Anderson reviewed the changes and additions. Senator Bunde made a motion to accept Section 12. Discussion held. Representative Roses stated that during the legislative committee meetings of HB 109 committee members discussed it was not always possible to conduct ethics training in person and that the use of a CD would

be sufficient as well. Member Turner suggested (b)(2)(B) be changed to (b)(3) since the content of the item was a separate issue. Senator Bunde accepted the change as a friendly amendment. Discussion held. Senator Stevens questioned why a person would be required to sign a form acknowledging review of the legislative ethics course if not attending in person. Those attending in person are not required to do so and the statute does not require it. Roll call vote taken: YES – Senator Bunde, Representative Roses, Members Thomas, Cook, Turner, and Rabinowitz and Chair Walker. NO – Senator Stevens and Representative Roses. Motion carried.

Section 18, page 18, Complaints – Hearing Procedures. Changed and added language concerning the timelines for a public hearing. Representative Roses made a motion to accept the changes. Hearing no objection, motion carried.

11. 2008 ETHICS LEGISLATION SUGGESTIONS: Letters were sent on January 27, 2008 to all legislators informing them the Ethics Office is available to work on legislative ethics legislation. Additionally, letters were sent to the chairs of House and Senate Judiciary and State Affairs committees with the recommendations for ethics changes from the committee.

Ms. Anderson reported several legislators' offices have called concerning voting on conflict of interest issues and asked if the committee had a position on this issue. Senator Stevens feels legislators should be able to recuse themselves from voting if they have a conflict. Chair Walker stated the Uniform Rules cover voting after declaring a conflict of interest and not the Legislative Ethics Act. The committee did not wish at this time to take a position on this issue.

12. OTHER BUSINESS: Ms. Anderson reported several legislators and staff had asked during ethics training sessions if the committee would revisit Advisory Opinion 07-04 Constituent Services. This type of request has not been asked before and Ms. Anderson asked for direction. Senator Bunde has had concerns from staff and legislators as well and would make the request to revisit if needed. Chair Walker placed this item on the next committee meeting agenda.

13. ADJOURN: Representative Roses made a motion to adjourn at 3:40 p.m.